

# **Exhibit 11**

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ELECTRONICALLY  
**FILED**

*Superior Court of California,  
County of San Francisco*

**09/09/2019**  
**Clerk of the Court**  
BY: JUDITH NUNEZ  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL )  
TITLE [RULE 3.550] )

Case No.: CJC-18-004978  
Judicial Council Coordination  
Proceeding No. 4978

**TEZOS ICO CASES**

Included Actions:

*Baker v. Dynamic Ledger Solutions, Inc., et al.,*  
Superior Court of California, County of San  
Francisco, Case No. CGC-17-562144

PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR RECONSIDERATION OF  
ORDER GRANTING SPECIALLY  
APPEARING DEFENDANT TEZOS  
STIFTUNG'S MOTION TO QUASH  
SERVICE OF SUMMONS; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT

*Trigon Trading Pty. Ltd., et al. v. Dynamic  
Ledger Solutions, Inc., et al.,* Superior Court of  
California, County of San Mateo, Case No.  
18CIV02045

Complaint Filed: October 25, 2017

Date: October 25, 2019

Time: 2:30 p.m.

Dept: 613

Judge: Honorable Teri L. Jackson

**REDACTED**

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES IN THE ABOVE-REFERENCED ACTION AND THEIR ATTORNEYS  
OF RECORD:

NOTICE IS HEREBY GIVEN that on October 25, 2019 at 2:30 p.m., or as soon thereafter as this matter may be heard, in Department 613 of the above-entitled Court, located at 400 McAllister Street, San Francisco, California 94102, plaintiff Andrew Baker (“Plaintiff”) will and hereby does move the Court under California Code of Civil Procedure §1008 for an order granting reconsideration of the Court’s August 28, 2019 Order quashing service of summons on Specially Appearing Defendant Tezos Stiftung (the “Foundation”), or in the alternative, modifying its Order to allow Plaintiff limited jurisdictional discovery. This motion will be made on the grounds that recently produced evidence demonstrates the Foundation’s purposeful avilment of California which supports this Court’s exercise of jurisdiction over it.

This motion is based upon this Notice of Motion, the accompanying memorandum of points and authorities in support of the motion, the papers and records on file in the above-referenced action, all matters of which this Court may take judicial notice, the concurrently filed declaration and exhibits, other materials in the record, argument of counsel, and such other matters as the Court may consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Plaintiff Andrew Baker (“Plaintiff”) brings this motion for reconsideration to request that the  
 4 Court modify its August 28, 2019 Order Granting Specially Appearing Defendant Tezos Stiftung’s (the  
 5 “Foundation”) Motion to Quash Service of Summons. After the briefing and hearing on the  
 6 Foundation’s Motion to Quash, Plaintiff discovered additional facts and evidence which demonstrate  
 7 the Foundation’s purposeful avilment of California and support this Court’s exercise of jurisdiction  
 8 over the Foundation. This evidence consists of encrypted communications between Dynamic Ledger  
 9 Solutions, Inc. (“DLS”) and the Foundation that were recently produced by defendant Arthur Breitman.  
 10 These contacts between the Foundation and Arthur Breitman were sent via technology which was  
 11 designed to make these communications *vanish* and thus never become discoverable.

12 Established as a Swiss entity by the California-based DLS Defendants<sup>1</sup> in order to skirt U.S.  
 13 securities laws, the Foundation collected the funds during the Tezos initial coin offering (“ICO”) selling  
 14 hundreds of millions of dollars-worth of Tezos blockchain tokens (“XTZ”) to investors, including  
 15 Plaintiff, a California resident, in violation of the Securities Act of 1933 (“Securities Act”). The  
 16 Foundation, however, was not independent of the DLS Defendants. According to the Foundation’s  
 17 former president Johann Gevers (“Gevers”), the DLS Defendants bypassed the Foundation’s legal  
 18 structure, interfered with its management and operations, and attempted to control the Foundation *as if*  
 19 *it were their own private entity*.

20 Recently, defendant Arthur Breitman produced thousands of pages which contained numerous  
 21 incomplete and selectively deleted communications. These communications, though difficult to  
 22 comprehend due to their incompleteness, have confirmed Gevers’ assertion that the Foundation was *not*  
 23 an independent entity. Rather these partially deleted encrypted communications reveal that the  
 24 Foundation was run by, and for the benefit of, the DLS Defendants from their headquarters in  
 25 California. In one partially deleted message, [REDACTED]

26 <sup>1</sup> The “DLS Defendants” refer collectively to defendants Arthur and Kathleen Breitman (together, the  
 27 “Breitmans”) and defendant DLS, all of which are based in California. Second Amended Complaint,  
 28 ¶¶20-22. Citations are omitted and emphasis is added throughout unless otherwise indicated.

1 [REDACTED]. Another partially deleted message reveals that [REDACTED]

2 [REDACTED].

3 Based on this new evidence, Plaintiff respectfully requests that the Court modify its order and  
4 deny the Foundation's Motion to Quash, or alternatively allow Plaintiff to conduct limited jurisdictional  
5 discovery.

## 6 **II. STATEMENT OF FACTS**

7 The Foundation, through its former president Gevers, coordinated the unregistered Tezos ICO  
8 with the California-based DLS Defendants through a private encrypted messaging application (the  
9 "Signal App") which was designed to allow users to automatically delete and make communications  
10 "*vanish*." Declaration of Sara B. Polychron in Support of Plaintiffs' Motion for Reconsideration of  
11 Order Granting Specially Appearing Defendant Tezos Stiftung's Motion to Quash Service of Summons  
12 ("Polychron Decl."), Ex. 1. [REDACTED]

13 [REDACTED]  
14 [REDACTED] Polychron Decl., Ex. 2.<sup>2</sup>

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] Polychron Decl., Ex. 3. [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] Polychron Decl., Ex. 4. [REDACTED]  
22 [REDACTED] Polychron  
23 Decl., Ex. 5.

24 [REDACTED]  
25 [REDACTED] Polychron Decl.,

26 <sup>2</sup> Pursuant to the January 24, 2019 Stipulated Protective Order and Plaintiff's concurrently filed  
27 Notice of Lodging of Certain Evidence Conditionally Under Seal, these document are filed  
28 provisionally under seal. The Foundation has not signed the protective order in this action.

1 Ex. 6. [REDACTED]

2 [REDACTED]  
3 [REDACTED] Polychron Decl., Ex. 7.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Polychron Decl., Ex. 8. [REDACTED]

7 [REDACTED]  
8 Polychron Decl., Ex. 9.

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] Polychron Decl., Ex. 11.

14 [REDACTED]  
15 [REDACTED] Polychron  
16 Decl., Ex. 12. [REDACTED]

17 [REDACTED] Polychron Decl., Ex. 13.

18 [REDACTED]  
19 [REDACTED] Polychron Decl., Ex. 14. [REDACTED]

20 [REDACTED]  
21 [REDACTED] Polychron Decl., Ex. 15.

22 **III. PROCEDURAL HISTORY**

23 Plaintiff filed his securities class action in San Francisco Superior Court on October 25, 2017,  
24 under the express jurisdiction of the Securities Act. On November 29, 2017, defendant DLS improperly  
25 removed this action to federal court, causing significant delays. Plaintiff filed a motion to remand, and  
26 on April 19, 2018, Judge Seeborg ordered Plaintiff's case remanded to this Court. Additional delays in  
27 this action resulted from a Petition for Coordination, which was granted on August 16, 2018. On

1 October 19, 2018, the Court partially lifted the stay on proceedings in order to allow Plaintiff to effect  
 2 service on the Foundation, and ***recommended that defendants share discovery*** in the related Federal  
 3 Action with Plaintiff.<sup>3</sup> Polychron Decl., Ex. 16. On November 8, 2018, Plaintiff requested that the  
 4 Foundation’s counsel accept service on behalf of the Foundation, and ***requested that defendants share***  
 5 ***copies of all discovery*** in the Federal Action. Polychron Decl., Ex. 17. On November 13, 2018, the  
 6 Foundation refused to accept service, forcing Plaintiff to undertake the lengthy and expensive process  
 7 of serving the Foundation through the Hague Service Convention, but ***ignored Plaintiff’s discovery***  
 8 ***requests***. *Id.* On December 4, 2018, Plaintiff again requested all discovery produced by defendants in  
 9 the Federal Action, but again received no response from the Foundation. Polychron Decl., Ex. 18.

10 On May 14, 2019, the summons and complaint were served on the Foundation in Zug,  
 11 Switzerland via the Hague. On June 24, 2019 the Foundation acknowledged service through its  
 12 counsel. On July 24, 2019, the Foundation specially appeared in this Court for the first time for the sole  
 13 purpose of filing a motion to quash service of summons (the “Motion”). The Foundation’s Motion  
 14 specifically objected to providing Plaintiff with ***any*** discovery, arguing that “[a]ny discovery in United  
 15 States courts would need to proceed pursuant to the Hague Evidence Convention,” and comply with  
 16 European data and privacy protection laws. Motion at 10-11. Plaintiff opposed the Foundation’s  
 17 Motion (the “Opposition”) on August 14, 2019, and requested the Court’s leave to conduct  
 18 jurisdictional discovery of the Foundation. Opposition at 13-14. On August 28, 2019, Your Honor  
 19 granted the Foundation’s Motion and denied Plaintiff’s request for leave to conduct jurisdictional  
 20 discovery.

#### 21 IV. LEGAL STANDARD

22 “[A]ny party affected by [an] order may, within 10 days after service upon the party of written  
 23 notice of entry of the order and based upon new or different facts, circumstances, or law, make  
 24 application to the same judge or court that made the order, to reconsider the matter and modify, amend,  
 25 or revoke the prior order.” C.C.P. §1008(a); *see Mink v. Superior Court*, 2 Cal. App. 4th 1338, 1342-44  
 26 (1992) (compelling the trial court to grant motion for reconsideration and for relief from order where

27 <sup>3</sup> *See In re Tezos Sec. Litig.*, No. 17-cv-06779-RS (N.D. Cal.) (the “Federal Action”).

moving party presented new facts to challenge the premise of the order). Reconsideration is appropriate if the moving party shows “that (1) evidence of new or different facts exist, and (2) the party has a satisfactory explanation for failing to produce such evidence at an earlier time.” *Kalivas v. Barry Controls Corp.*, 49 Cal. App. 4th 1152, 1160-61 (1996). Where new or different facts justifying a different outcome come to light, “then that new information will support a renewed application that satisfies section 1008.” *Even Zohar Constr. & Remodeling, Inc. v. Bellaire Townhouses, LLC*, 61 Cal. 4th 830, 842 (2015).

Moreover, the Court has the absolute ability to reconsider its Order on its own outside of the framework of section 1008. *See Darling Hall & Rae v. Kritt*, 75 Cal. App. 4th 1148, 1157 (1999) (“the only requirement of the court is that it exercise ‘due consideration’ before modifying, amending, or revoking its prior orders”); *Case v. Lazben Fin. Co.*, 99 Cal. App. 4th 172, 189 (2002). As the California Supreme Court explained:

We cannot prevent a party from communicating the view to a court that it should reconsider a prior ruling (although any such communication should never be ex parte). We agree that it should not matter whether the “judge has an unprovoked flash of understanding in the middle of the night” (*Remsen v. Lavacot, supra*, 87 Cal. App. 4th at p. 427 . . .) or acts in response to a party’s suggestion. If a court believes one of its prior interim orders was erroneous, it should be able to correct that error no matter how it came to acquire that belief.

*Le Francois v. Goel*, 35 Cal. 4th 1094, 1108 (2005); *see also Cox v. Bonni*, 30 Cal. App. 5th 287, 312-13 (2018) (“section 1008 imposes no limits on ‘a court’s ability to reconsider its previous interim orders on its own motion’”).

## **V. ARGUMENT**

### **A. Recently Revealed Evidence Justifies Reconsideration of the Court’s Order**

Here, reconsideration is appropriate under C.C.P. §1008 and the Court’s inherent power. Since the briefing on the Foundation’s Motion and the hearing on that Motion, Plaintiff has discovered additional facts and evidence which demonstrate the Foundation’s purposeful availment of California and support this Court’s exercise of jurisdiction over the Foundation. This evidence, sprinkled throughout over 2,000 pages of documents, was produced by Arthur Breitman shortly before the briefing on the Foundation’s motion to quash. This evidence provides hard proof that the Foundation’s



1 activities were directed by the DLS Defendants here in California. Plaintiff respectfully offers this new  
2 evidence for the Court's reconsideration.<sup>4</sup>

3 First, Plaintiff has discovered through documents recently produced by Arthur Breitman,<sup>5</sup> that  
4 Arthur Breitman and Gevers, the Foundation's President, utilized an encrypted messaging application  
5 which allowed them to *automatically delete* communications related to their orchestration of the Tezos  
6 ICO. Polychron Decl., Ex. 1. The Signal App touts its service as enabling users to automatically delete  
7 their messages and make "*words vanish.*" *Id.* Deciphering communications sent via the Signal App is  
8 particularly difficult, given that the application's stated purpose is to create "*disappearing message[s]*"  
9 for its users, making full discovery of those communications impossible. *Id.* According to counsel for  
10 DLS and the Breitmans, the Signal App communications were manually produced as "screen-shots"  
11 from Arthur Breitman's mobile phone. Polychron Decl., Ex. 19. These screen-shots show that many of  
12 Arthur Breitman's communications with Gevers via the Signal App have been deleted, leaving many of  
13 the resulting conversations extremely difficult, if not impossible, to fully decipher.<sup>6</sup> Nonetheless, a  
14 painstaking inspection of these messages demonstrates that the DLS Defendants were coordinating with  
15 and directing the Foundation's activities from California:

16 • 

18 <sup>4</sup> As noted above, the Foundation has not produced *any* discovery in the instant action, arguing that to  
19 do so would be burdensome, time-consuming and expensive, noting that "[a]ny discovery in United  
20 States courts would need to proceed pursuant to the Hague Evidence Convention," and would need to  
21 comply with European data and privacy protection laws. Motion at 10-11. In order to lessen any  
burden, Plaintiff requested discovery that had already been produced by the Foundation in the Federal  
Action, but received no response. Polychron Decl., Exs. 17-18. Hence, Plaintiff has been afforded no  
discovery from the Foundation in this action, let alone jurisdictional discovery.

22 <sup>5</sup> Documents AB00000001 through AB00002288 were produced by Arthur Breitman on July 17,  
23 2019.

24 <sup>6</sup> 

27 Polychron Decl., Ex. 2.

Polychron  
Decl., Ex. 2.

- Polychron Decl., Ex. 3.

- Polychron Decl.,  
Ex. 4.

- Polychron Decl., Ex. 5.

- Polychron Decl., Ex. 6.

- Polychron Decl., Ex. 7.

- Polychron Decl., Ex. 8.

- Polychron Decl., Ex. 9.

- Polychron Decl., Ex. 10.

- Polychron Decl., Ex. 11.

These recently produced encrypted communications are evidence of newly unearthed facts which paint a more complete picture of the Foundation's coordination with the California-based DLS Defendants, and Arthur Breitman in particular, who often directed the Foundation from California.

<sup>7</sup> As Judge Seeborg noted in his Order Denying the Foundation's Motion to Dismiss the Federal Action on jurisdictional grounds, Kenyon, was the Foundation's American spokesperson. Federal Action, ECF No. 148 at 3.

1 [REDACTED] Polychron Decl., Ex. 2. The Foundation's conduct of the ICO was based on these  
 2 frequent contacts and the DLS Defendants' direction. [REDACTED]

3 [REDACTED]  
 4 Polychron Decl., Ex. 8. [REDACTED]

5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] Polychron Decl., Ex. 12. [REDACTED]

9 [REDACTED]  
 10 [REDACTED] Polychron Decl., Ex. 13.

11 [REDACTED]  
 12 [REDACTED] Polychron Decl., Ex. 14. [REDACTED]

13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED] Polychron Decl., Ex. 15.

16 While these documents clearly demonstrate that the Foundation was conducting the Tezos ICO  
 17 through and at the behest of the DLS Defendants and other California employees, Arthur Breitman's  
 18 deletion of his Signal App messages with Gevers obscures the full extent of the Foundation's reliance  
 19 upon the DLS Defendants in California. It also underscores the need for further jurisdictional discovery  
 20 from the Foundation, and its former president, Gevers, who are the only parties that may retain Arthur  
 21 Breitman's deleted messages.<sup>8</sup>

22  
 23 <sup>8</sup> Plaintiff's inability to produce this new evidence in its Opposition was reasonable because the  
 24 evidence was hidden within thousands of pages of documents produced by Arthur Breitman shortly  
 25 before Plaintiff's Opposition was due. *Kalivas*, 49 Cal. App. 4th at 1160-61 (Reconsideration is  
 26 appropriate if the moving party shows "that (1) evidence of new or different facts exist, and (2) the  
 27 party has a satisfactory explanation for failing to produce such evidence at an earlier time."). At the  
 28 time of the production, Plaintiff's counsel was also focused on opposing three additional motions filed  
 by the DLS and Draper Defendants. Plaintiff's counsel was thus unable to piece-together this new  
 evidence before the Opposition was due. Moreover, the nature of Arthur Breitman's Signal App  
 messages with Gevers, and Arthur Breitman's missing half of the conversation, made those messages  
 difficult and time consuming to decipher. If the Foundation had agreed to produce documents from the

1 **VI. CONCLUSION**

2 For all of the reasons stated herein, Plaintiff respectfully requests that the Court grant his Motion  
3 for Reconsideration and deny the Foundation's Motion to quash service of summons in its entirety, or  
4 alternatively modify its order to allow Plaintiff to conduct limited jurisdictional discovery.<sup>9</sup>

5 DATED: September 9, 2019

Respectfully submitted,

6 ROBBINS GELLER RUDMAN  
7 & DOWD LLP  
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19 *Attorneys for Plaintiff Andrew Baker*

20  
21  
22  
23  
24 Federal Action, as requested, Plaintiff would have had an opportunity to timely discover the deleted  
communications and other evidence of the Foundation's contacts.

25 <sup>9</sup> If the Court is inclined to deny the Motion for Reconsideration, Plaintiff respectfully requests leave  
26 to amend the complaint. *See, e.g., City of Stockton v. Superior Court*, 42 Cal. 4th 730, 746-47 (2007)  
27 ("leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that  
it is incapable of amendment"). Although Plaintiff has previously amended his complaint, he has not  
done so with regards to the Foundation.

DECLARATION OF SERVICE BY FILE & SERVE XPRESS AND EMAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, CA 92101.

2. That on September 9, 2019, declarant served PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDER GRANTING SPECIALLY APPEARING DEFENDANT TEZOS STIFTUNG'S MOTION TO QUASH SERVICE OF SUMMONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT [REDACTED] via File & Serve XPress on the recipients designated on the Transaction Receipt located on the File & Serve XPress website.

3. That on September 9, 2019, declarant served PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDER GRANTING SPECIALLY APPEARING DEFENDANT TEZOS STIFTUNG'S MOTION TO QUASH SERVICE OF SUMMONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT [REDACTED] by delivering via electronic mail to the parties on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 9, 2019, at San Diego, California.



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NATALEE HORSTMAN

**SERVICE LIST**

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\* Denotes parties authorized to view Protected Material under paragraph 12.3 of the January 24, 2019 Stipulated Protective Order.